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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,981	02/20/2002	Steven P. Bermes	UP-273	6527

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EXAMINER
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CHOI, STEPHEN

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/078,981

Applicant(s)

BERMES, STEVEN P.

Examiner

Stephen Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-21 and 27-51 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 19-21, 27-36, 39-44 and 49-51 is/are rejected.  
7) ☒ Claim(s) 37, 38 and 45-48 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 35, 42-44, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Rece (US 1,356,941).

Rece discloses all the recited elements of the invention including;

- c) a pair of opposing contacting walls (at 1, 2);
- d) a pair of opposing retaining walls (at 3, 6);
- e) a cutting blade (11);
- f) a distance between the contacting walls is greater than a distance between the retaining walls (Figure 1).

3. Claim 43 is rejected under 35 U.S.C. 102(b) as being anticipated by Ogletree (US 2,109,303).

Ogletree discloses all the recited elements of the invention including:

- g) a tool body (5);
- h) a cavity in the tool body (Figure 3);
- i) a rectangular cavity opening (Figure 4);
- j) a pair of contacting walls (a,c);
- k) a cutting blade (9) in the cavity.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-21 and 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hara et al. (US 4,606,289) in view of McLain (US 4,120,255).

Hara discloses the invention substantially as claimed including a cutting tool comprising a tool body (11), a cavity (13b), a cutting blade (12) in the cavity, a pair of opposing contacting walls located generally parallel with the cutting blade (14, 15). Hara fails to disclose a monofilament line. However, McLain teaches the use of a monofilament line for sewing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a monofilament line as taught by McLain on a sewing machine of Hara as an alternative sewing thread. Regarding claim 20, Hara fails to disclose the tool body made of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the body made of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Regarding claim 21, a pair of opposing retaining walls in the cavity (13a) located generally perpendicular to the cutting blade. Regarding claims 27, 31, and 34, the contacting walls are equidistant from the cutting blade. Regarding claim 28, a cutting edge is located between the contacting walls (Figure 3). Regarding claims

32-33, a pair of opposing retaining walls are located generally perpendicular to the cutting edge (13a).

6. Claims 35-36, 39-41, 44, and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogletree.

Ogletree discloses the invention substantially as claimed except for a distance between the contacting walls is greater than a distance between the retaining walls. However, Ogletree teaches the size or shape may be modified and such modifications would not change the principle of operation. It would have been an obvious matter of design choice to change the distance between the contacting or retaining walls, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

***Allowable Subject Matter***

7. Claims 37-38 and 45-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form **including all of the limitations of the base claim and any intervening claims.**

***Response to Arguments***

8. Applicant's arguments filed 13 April 2005 have been fully considered but they are not persuasive.

**Response to applicant's arguments on the rejections over Hara in view of McLain**

Regarding claims 19-21 and 27, applicant contends that Hara does not disclose a pair of opposing monofilament line contacting walls in the cavity.

The examiner disagrees. Inner walls of elements 14 and 15 are located generally parallel with a cutting blade 12 and portion of the inner walls is disposed within the cavity 13b. As can be seen from Figure 2, legs of U-shaped portion of a line are capable of being positioned against the portion of the inner walls in the cavity opposite to the position of the cutting blade.

Regarding claims 28 and 29-34, applicant contends that Hara teaches an inward facing surface being positioned against a cutting edge of the blade rather than a tensioned exterior surface of a line being positioned against the cutting edge of the blade as claimed.

The examiner disagrees. The exterior surface of the line is positioned against the cutting edge via the inward facing surface. However, even if applicant argues that the limitation calls for the tensioned exterior surface being directly contacting the cutting edge, the modified device of Hara is still capable of performing the recited function.

Response to applicant's arguments on the rejections over Rece

Regarding claims 35 and 42, applicant contends that Rece does not disclose a pair of opposing contacting walls and a pair of opposing retaining walls and does not teach a generally rectangular opening.

Rece does disclose a pair of opposing contacting walls and a pair of opposing retaining walls at inner walls of elements 1, 2, 3, and 6 which define a cavity therebetween capable of receiving a monofilament line as claimed and the cavity has an opening that is generally rectangular. The device of Rece satisfies all the claimed structural limitations and capable of performing the recited function.

Response to applicant's arguments on the rejections over Ogletree

Regarding claims 35-36 and 39-41, applicant contends that there is no suggestion to modify the device of Ogletree to provide a pair of opposing contacting walls at a distance greater than a distance between a pair of opposing retaining walls because such a modification would make it more difficult to obtain the desired slices. Applicant further contends that extending the cutting blade between the retaining walls on the modified device of Ogletree would pose a greater risk of asymmetrical cut beans. In addition, applicant argues that the opening on Ogletree is square, not rectangular.

The examiner disagrees. Although Ogletree teaches a square-shaped wall structure as a preferred embodiment for splitting string beans, it is examiner's position that one having ordinary skill in the art would have been motivated to change the shape in order to accommodate differently shaped workpieces and/or to obtain differently shaped slices. Furthermore, square is rectangular.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Friday 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SC  
26 May 2005

  
**STEPHEN CHOI**  
**PRIMARY EXAMINER**